Nos. 99-5; 99-29

Supreme Court, U.S.
FILED
NOV 12 1999
CLERK

IN THE

Supreme Court of the United States

UNITED STATES OF AMERICA,

Petitioner,

-and-

CHRISTY BRZONKALA,

Petitioner,

v.

ANTONIO J. MORRISON, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Brief of *Amici Curiae* AYUDA, Inc., Asian & Pacific Islander American Health Forum, Asian/Pacific Islander Domestic Violence Resource Project, The National Association Of Women Lawyers, Project Esperanza, Refugee Women's Network, Inc., Sakhi For South Asian Women, Sanctuary For Families' Center For Battered Women's Legal Services, S.T.O.P.D.V., Inc., Asian Women's Shelter, Barrier Free Living, Daya Inc., Manavi, New York Asian Women's Center and Saheli in Support of Petitioners

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INTERESTS OF *AMICI CURIAE*

This brief *amici curiae* is submitted on behalf of AYUDA, Inc., the Asian & Pacific Islander American Health Forum, the Asian/Pacific Islander Domestic Violence Resource Project, The National Association of Women Lawyers, Project Esperanza, Refugee Women's Network, Inc., Sakhi for South Asian Women, Sanctuary for Families' Center for Battered Women's Legal Services, S.T.O.P.D.V., Inc., the Asian Women's Shelter, Barrier Free Living, Daya Inc., Manavi, the New York Asian Women's Center, and Saheli. These nonprofit educational organizations provide assistance to, and advocate for the rights of, women who are victims of gender-based domestic violence; most of these organizations have a particular focus on victims who are immigrants to this country. *Amici* have substantial knowledge of the national and local problem of gender-based violence, especially in the context of domestic relations, and of the particular impact of gender-based violence on immigrant women.[1]

Amici are vitally interested in this case because their clients' lives are directly, and often profoundly, affected by gender-motivated domestic violence, and by the inadequacy of state and local resources for protecting against and redressing such violence. *Amici* are concerned that the lower court's erroneous decision, if left undisturbed, would deprive their clients of a secure means of redress for -- and a

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[1] This brief was authored by the *amici* and counsel listed on its cover, and was not authored in whole or in part by counsel for a party. No one other than *amici* or their counsel made any monetary contributions to the preparation or submission of this brief. This brief is being filed with the written consents of all the parties, which have been filed with the Clerk.

probable source of deterrence against -- gender-motivated domestic violence.

STATEMENT OF THE CASE

In the interest of judicial economy, *amici* adopt the Statements of the Case contained in the briefs of the Petitioners.

SUMMARY OF THE ARGUMENT

Domestic violence is one of the most prevalent forms of gender-motivated violence. As Congress found in enacting the Violence Against Women Act (VAWA), the problem has tremendous effects on the national economy in terms of crime costs, workplace absenteeism, medical care costs, and losses such as emotional harm. Domestic violence also is gender-specific: nearly all of its victims are women, and the underlying motivations for it are gender-related.

One of the groups profoundly affected by domestic violence is immigrant women. Domestic violence against immigrant women is widespread, affecting women of all races, ethnicities, and socioeconomic classes in communities throughout the United States.

As is true with respect to domestic violence generally, domestic violence against immigrant women nearly always is based on gender animus. The problem of domestic violence against immigrant women is especially troubling because immigrant victims may face unique barriers to obtaining protection and redress, such as ignorance of legal rights and fear of deportation. These barriers often deter battered immigrant women from reporting abuse, reducing

the likelihood of securing criminal convictions of abusers. Immigrant women also frequently face discrimination and legal obstacles when they attempt to secure criminal or civil redress from state and local legal systems.

The problem of gender-motivated domestic violence against immigrant women is a subset of the devastating national problem of violence against women. VAWA seeks comprehensively to address the problem of violence against women, along with its particular effect on immigrant women. 42 U.S.C. § 13981 is a narrowly drawn, but essential, part of VAWA's statutory scheme.

Although § 13981 seeks to protect the civil right of all persons to be free from gender-motivated violence, the provision ameliorates some of the particular problems faced by battered immigrant women. For instance, § 13981 helps compensate for the barriers to reporting, along with the inadequacies of state and local resources for protection, by ensuring that battered immigrant women are provided with a means of obtaining civil redress from their abusers. Additionally, by declaring that all individuals have the right to be free from gender-motivated violence, § 13981 helps to ensure that battered immigrant women have knowledge of and confidence in the American legal system's ability to protect their right to be free from abuse in this country.

Section 13981 constitutionally responds to a problem having tremendous effects on interstate commerce, which state and local legal systems have failed adequately to address. Accordingly, this Court should reverse the lower court's decision, thereby ensuring that VAWA's comprehensive remedial structure is maintained, and that all victims of gender-motivated violence, including battered

immigrant women, receive the full panoply of VAWA's protections.

ARGUMENT

I. THE PROBLEM OF GENDER-MOTIVATED DOMESTIC VIOLENCE AGAINST IMMIGRANT WOMEN IS OF NATIONAL SCOPE AND CONSEQUENCE.

A. The Magnitude and Nature of the Problem

Domestic violence is one of the most common and pernicious forms of violence against women in this country. As Congress recognized in enacting VAWA, domestic violence harms millions of women across the United States, and costs the national economy billions of dollars annually in crime, medical care, employment, and other social costs.[2] Although domestic violence crosses race, ethnic, socioeconomic and geographical boundaries, it has a clear gender bias: approximately 95% of its victims are women, and the violence is motivated and perpetuated by perceptions of and biases against women.[3]

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[2] *See* S. Rep. No. 103-138, at 41 (1993) (finding that one million women annually seek medical attention as a result of domestic violence, and that society pays $5 billion to $10 billion per year in various costs associated with such violence).

[3] *See* H.R. Rep. No. 103-395, at 26 (1993); *see also* Julie Goldscheid, *Gender-Motivated Violence: Developing a Meaningful Paradigm for Civil Rights Enforcement*, 22 Harv. Women's L.J. 123, 147-48 (1999) (discussing the gender biases that often propel domestic violence against women).

One of the groups tremendously affected by domestic violence is immigrant women. Gender-motivated domestic violence against immigrant women affects communities of all nationalities in all regions of this country. The information that has been gathered on domestic violence against immigrant women demonstrates that the prevalence of such violence is disturbingly high. The magnitude and appalling nature of the problem also are illustrated by numerous individual stories and reports.

Surveys of immigrant populations in the United States indicate that domestic abuse of women is common. For example, a District of Columbia study, which was cited by Congress in enacting VAWA, found that the rate of domestic violence against Latina immigrants married to United States citizens or lawful permanent residents was 77%.[4] Another study reported that, in 1996, domestic violence organizations in the Washington, D.C. metropolitan area aided nearly 500 battered Asian immigrant women from virtually all ethnic Asian backgrounds.[5] Reports of immigrant spousal abuse to

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[4] *See* H.R. Rep. No. 103-395, at 26-27 (citing San Francisco Neighborhood Legal Assistance Foundation, Family Violence Prevention Fund, Asian Law Caucus, AYUDA, "Untold Stories: Cases Documenting Abuse by U.S. Citizens and Lawful Residents on Immigrant Spouses" (1993)); *see also* Leslye E. Orloff & Rachel Little, AYUDA, Inc., *Somewhere to Turn: Making Domestic Violence Services Accessible to Battered Immigrant Women* 7 (1999) (citing an AYUDA survey of immigrant women in which 62% of those questioned reported that they were subjected to weekly physical or emotional abuse).

[5] *See* Amita Bhandari Preisser, *Domestic Violence in South Asian Communities in America: Advocacy and Intervention*, 5 Violence Against Women 684, 688 (June 1999) (reporting findings of the Asian/Pacific Islander Domestic Violence Resource Project).

a Florida domestic violence organization more than doubled during the 1990s.[6] In Orange County, California, a single domestic violence program assisted 1,704 Asian and Latina domestic violence victims during fiscal year 1996-97.[7]

By far, the most telling evidence of the extent of gender-motivated domestic abuse against immigrant women comes from the stories of numerous individual victims from across the country. Researchers have gathered oral accounts illustrating the prevalence of domestic abuse in immigrant communities.[8] These accounts, along with news reports, demonstrate that such violence is widespread, and crosses ethnic and class boundaries.[9] For example:

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[6] Dan Moffett, *Counselors Help Immigrants Adjust to New Lifestyles*, Palm Beach Post, July 25, 1999, at 6A, *available in* 1999 WL 21273127.

[7] Tini Tran, *Asians, Latinos Now Find Refuge from Domestic Violence Services: Over the Last 10 Years, Everything from Treatment Programs to Court Services Have Been Modified to Address the Needs of Immigrants*, L.A. Times, May 4, 1998, at A3, *available in* 1999 WL 2424288.

[8] *See, e.g.*, Margaret Abraham, *Sexual Abuse in South Asian Immigrant Marriages*, 5 Violence Against Women 591 (June 1999) (using interviews of Asian Indian immigrant women to illustrate the extent of sexual abuse of women in that community).

[9] *See, e.g.*, Orloff & Little, *supra* note 4, at 9 ("Immigrant domestic violence victims come from many socio-economic levels. Not all battered immigrants are from lower socio-economic classes. Immigrant victims may be doctors, business owners, scientists, or child care providers. Perpetrators may be police officers, military personnel, sports heroes, diplomats, or college professors.").

- In Boston, a Haitian immigrant viciously beat his pregnant ex-girlfriend, also a Haitian immigrant, in what a prosecutor described was one of the "top five of the most brutal cases" of domestic violence she had seen;[10]
- In at least three cases in Texas and New York, Asian Indian immigrant men have poured gasoline on their wives or girlfriends and set them on fire, resulting in death in two of the cases;[11]
- In Salt Lake City, Olga,[12] a Russian immigrant, was beaten and threatened with knives by her husband for three years before escaping;[13]

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[10] Jack Sullivan, *Man Sentenced for Beating Pregnant Former Girlfriend*, Boston Herald, September 10, 1999, at 14, *available in* 1999 WL 3407650.

[11] *See* Raghu N. Singh & N. Prabha Unnithan, *Wife Burning: Cultural Cues for Lethal Violence Against Women Among Asian Indians in the United States*, 5 Violence Against Women 641, 646-49 (June 1999); Karen Freifeld, *Woman Recants in Abuse Case; Reverses Testimony that Man Burned Her*, Newsday (New York), July 27, 1999, at A4, *available in* 1999 WL 8182703 (reporting that burn victim recanted testimony that her boyfriend attempted to murder her by setting her on fire; noting that the recantation illustrates the difficulties associated with prosecution of domestic abuse).

[12] To protect privacy, many of the names of the women mentioned in this brief were changed by those who first reported their stories. This brief identifies victims only by their first names.

[13] Shawn Foster, *Law's Demise Puts Immigrant Wives at Risk; Non-Citizen Victims of Spousal Abuse May Lose Sources of Help; Immigrant Wives May Lose Key Sources of Help*, Salt Lake Trib., January 25, 1999, at B1, *available in* 1999 WL 3344058.

- An Asian immigrant living in Boston was given electric shocks and dragged around by her hair by her husband, a medical researcher;[14]

- In New Jersey, Jeffria, a Yugoslav immigrant, was punched, kicked, thrown against a table, and locked out of her home on winter nights, while her husband told her: "Nobody can help you. Not even God."[15]

Stories of these types abound in immigrant communities around the nation.[16]

As with domestic violence generally, domestic violence against immigrants is gender-specific. The evidence of the problem indicates that virtually all of its victims are women. Further, domestic violence against immigrant women may result from beliefs that domestic violence is an acceptable, or even sanctioned, form of violence against women.[17]

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[14] Hermione Malone, *Asian Task Force Encouraged by Drop in Domestic Abuse Deaths*, Boston Globe, September 25, 1999, at B3, *available in* 1999 WL 6083785.

[15] Juan Forero, *It's an INS First: Abused Wife Granted Residency*, The Star-Ledger (Newark, NJ), August 30, 1996, at 1, *available in* 1996 WL 11872231.

[16] Research and surveys also shed light on the sometimes distinctive nature of the domestic abuse suffered by immigrant women. *See* Orloff & Little, *supra* note 4, at 4-8 (discussing the various forms of physical and emotional abuse that are often exacted against immigrant women). For example, immigrant wives have been abused not just by their husbands, but also by their husbands' extended families, who may live in the same household or neighborhood. *See, e.g.*, Meeta Mehrotra, *The Social Construction of Wife Abuse: Experiences of Asian Indian Women in the United States*, 5 Violence Against Women 619, 627-28 (June 1999).

[17] *See, e.g.*, Abraham, *supra* note 8, at 591 (noting that, in many (Continued...)

B. The Barriers Faced by Abused Immigrant Women to Obtaining Protection and Redress

The problem of gender-based domestic violence against immigrant women also is particularly disturbing because of the unique barriers its victims face to obtaining protection and redress. The civil rights remedy afforded by § 13981 works to diminish many of these barriers.

First, many immigrant women lack knowledge of their legal rights, and of the processes that may be used to vindicate those rights. This ignorance often stems from the victim's experiences in her home country, in which domestic violence may have been treated merely as a non-criminal "private" matter.

Second, the threat of deportation causes many immigrant women to avoid seeking criminal redress against their abusers. Regardless of their actual immigration status, many immigrant women fear being deported either upon reporting abuse to police, or along with their husbands if their husbands are criminally convicted of domestic violence-related crimes.

Third, immigrant women frequently face economic obstacles to escaping their abusers. Economic deprivation is often used by abusers as a tool to control their partners' ability to leave the relationship. This can be especially

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cultures, sexual abuse of women within marriages "is often tolerated by institutions and by cultural beliefs that uphold the superior position of men, the sacredness of family, and women's socioeconomic dependency on men") (citation omitted).

crippling for abused immigrant women, who may lack critical support networks in this country.

Fourth, those immigrant victims who do pursue criminal or civil actions in state and local legal systems often face apathy or gender bias from police, prosecutors, and judges, making it difficult to obtain necessary protection and relief.

1. Ignorance of Legal Rights

One of the barriers frequently facing immigrant women victims of domestic violence is ignorance of their legal rights in this country, and of the processes that may be used to vindicate those rights. This lack of knowledge often stems from an assumption that domestic violence will be treated no differently in the United States than in the victim's home country:

> With limited acknowledgment of domestic violence in their own countries, battered immigrants may come to the United States unfamiliar with what legally available and socially acceptable recourse exists for victims. In some countries, domestic violence, while not only denied, may be found culturally acceptable. Other countries have only recently criminalized wife battering or violence against women. Only a few countries have programs or shelters to help abused women.[18]

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[18] Linda Kelly, *Stories from the Front: Seeking Refuge for Battered Immigrants in the Violence Against Women Act*, 92 Nw. U. L. Rev. 665, 682 (1998) (citations omitted); *see also* Orloff & Little, *supra* note 4, at 11-12 ("Most immigrant women, even those who have attained lawful permanent residency or become naturalized citizens, are afraid to use and do not understand how our legal system works."); Maurice Goldman, *The Violence Against Women Act: Meeting its Goal of*

(Continued...)

One horrific example of the consequence of this ignorance is the story of Phyllis, a West African woman whose husband had slapped, punched, and kicked her, raped her repeatedly, bitten her across the back and arms, choked her, thrown her down a staircase, and otherwise brutally abused her and their children. Because she was unaware of her rights in this country, Phyllis believed her husband, a court employee, when he warned that if she reported him or tried to leave, he would get court employees to testify that she was insane, and that her children should be taken away from her.[19] Phyllis endured the abuse for nine years, seeking help only after she discovered her husband had raped their five-year-old daughter.[20]

In another example from New York, a 23-year-old immigrant from Guyana suffered abuse and death threats from her husband for more than a year before finally reporting to authorities. She stated that, in Guyana, when she would report the abuse to police, they told her there was nothing they could do; her mother warned her that "it would be a waste of time here [in the United States] as well."[21]

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Protecting Battered Immigrant Women?, 37 Fam. & Conciliation Courts Rev. 375, 377 (1999) (noting that immigrant victims often misunderstand this country's common law system, under which oral testimony is not only valid, but is the primary form of evidence).

[19] Deborah Epstein, *Effective Intervention in Domestic Violence Cases: Rethinking the Roles of Prosecutors, Judges, and the Court System*, 11 Yale J.L. & Feminism 3, 35-36 (1999).

[20] *Id.* at 36.

[21] Nancie L. Katz, *Shattering the Abuse Taboo: Immigrant Victims Counseled to Seek Aid*, New York Daily News, September 23, 1999, at 3, *available in* 1999 WL 23485546.

Section 13981 helps ameliorate the problem of ignorance of rights by declaring that "[a]ll persons within the United States shall have the right to be free from crimes of violence motivated by gender[.]" 42 U.S.C. § 13981(b). The civil remedy reinforces the concept that gender-based violence will not be tolerated, and that both civil and criminal remedies will be available to respond to such violence. This affirmation clearly informs all victims of gender-motivated violence, including battered immigrant women, of their right in this country to be free from such violence, and of the importance the American legal system has placed on that right.

2. Fear of Deportation or Loss of Child Custody

Regardless of their actual immigration status, many abused immigrant women avoid reporting gender-motivated domestic violence to criminal authorities out of a fear of deportation or loss of child custody.[22] Abusers frequently use the threat of deportation as a manipulative device to preclude reporting or escape; many victims believe in the threat's validity whether or not it has any basis in law.[23] The

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[22] *See* Orloff & Little, *supra* note 4, at 12-13. Many battered women are reluctant to report abuse when child custody is at issue. This reluctance stems from a belief that judges deciding child custody matters will view a battered woman as weak and unable to care for her children. *See* Kelly, *supra* note 18, at 677.

[23] *See* Orloff & Little, *supra* note 4, at 12. Often, the victim may be concerned that, if she is deported, she could be subjected to worse treatment in her home country than she experienced in the United States. *See, e.g.*, Lee J. Teran, *Barriers to Protection at Home and Abroad: Mexican Victims of Domestic Violence and the Violence Against Women Act*, 17 B.U. Int'l L.J. 1, 7 (1999) (positing that many battered immigrant women, including Mexicans, face considerable adversity if deported).

victim's perception may be reinforced by the fact that some abusers actually carry out their threats: when Soledad, a Peruvian immigrant, filed for divorce after enduring two years of abuse, her husband turned her passport in to INS officials.[24] Another woman's husband flagged down a Border Patrol car after an argument and demanded that the woman be deported; she was.[25]

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[24] Thomas Huang, *Nowhere to Run: Immigrant Women Can Face Added Barriers When Trying to Escape from Abusive Partners*, Dallas Morning News, August 20, 1998, at 1A, *available in* 1998 WL 13096381.

[25] Sarah Tully Tapia, *The Helpless Immigrants: Non-Citizen Victims Can Seek Residency On Their Own*, Arizona Daily Star, April 25, 1999, at 1A, *available in* 1999 WL 5717584. Before VAWA's passage, the threat of deportation was particularly grave for undocumented battered immigrant women. In one survey, 64% of the undocumented battered immigrants who responded stated that fear of deportation was their primary reason for failing to seek help. Orloff & Little, *supra* note 4, at 13 (citing Chris Hogeland & Karen Rosen, Coalition for Immigrant and Refugee Rights and Services, *Dreams Lost, Dreams Found: Undocumented Women in the Land of Opportunity* 63 (1991)). The "silence-or-departure" dilemma faced by undocumented women was created by immigration laws rendering undocumented spouses of citizens or lawful permanent residents dependent on their partners to sponsor them for lawful residency in this country. *See* Farhan Haq, *Aid for Battered Immigrant Women Slow in Coming*, Inter Press Service, March 19, 1996, *available in* 1996 WL 9809465; *see also, e.g.*, Kelly, *supra* note 18, at 667-71 (describing the history of the immigration laws giving control over the immigration process to abusive petitioning spouses); Goldman, *supra* note 18, at 378 ("Before the VAWA was signed, the abuser controlled the alien's legal status in the United States.").

VAWA provides undocumented battered immigrants with the right to "self-petition" for lawful residency without their partner's sponsorship, 8 U.S.C. § 1154(a)(1)(A)(iii), and requires the INS to consider "any credible evidence" in determining whether to grant such a

(Continued...)

A separate facet of this barrier frequently is the victim's fear that her non-citizen *abuser* will be deported if he is charged with and convicted of the abuse.[26] Deportation of the abuser may carry severe consequences for the victim, such as retaliation by the abuser against the victim's relatives in her home country.[27] Additionally, in some cases the victim's immigration status may be linked to her partner's, such that she could face deportation along with her abuser if he is convicted.[28] This dilemma may make

(...Continued)
petition. *Id.* § 1154(a)(1)(H). VAWA also permits battered immigrants to invoke a "cancellation of removal" defense in deportation proceedings. *Id.* § 1229b(b)(2) (Supp. III 1997).

[26] *See* Orloff & Little, *supra* note 4, at 206 (noting that abusers of immigrant battered women who are non-citizens can face deportation if convicted of domestic violence crimes); *see also* Cecelia M. Espenoza, *No Relief for the Weary: VAWA Relief Denied for Battered Immigrants Lost in the Intersection*, 83 Marq. L. Rev. 163, 176-77 (1999) (discussing domestic violence-related crimes for which conviction could result in deportation).

[27] *See* Orloff & Little, *supra* note 4, at 211-12 (advising advocates of battered immigrant women's rights to assess victims' fears of retaliation if their abusers are deported as a result of a criminal conviction).

[28] *See id.* at 190 (noting that, if a criminal prosecution of a non-citizen abuser proceeds before the victim qualifies for immigration relief under VAWA, the victim may lose her eligibility to file a self-petition under VAWA; "For this reason, it is very important for advocates and prosecutors [to] help battered immigrants make informed decisions about whether or not they wish to cooperate in the criminal prosecution of their abusers."); *see also* Espenoza, *supra* note 26, at 211 ("Informed immigrant women who may be ready to move out of abusive situations recognize that the institution of criminal proceedings may lead to deportation of the abuser, and if they are aware of the adverse
(Continued...)

pressing criminal charges against an abuser a practical impossibility for many immigrant women who suffer gender-motivated abuse.

These threats are diminished by the existence of § 13981, which allows immigrant victims of gender-motivated domestic violence to choose either criminal remedies or federal civil relief for the gender-based abuse they have suffered. Whereas victims may be fearful of seeking criminal relief that necessitates the use of law enforcement authorities, a civil remedy may allow victims to obtain the needed relief through a less threatening mechanism.

3. Economic Dependence on Abusers

Another hardship faced by many victims of gender-motivated domestic violence, including battered immigrant women, is complete economic dependence on their abusers. Economic deprivation frequently is used by abusive men as a tool to prevent their partners from escaping. In many abusive families, the abuser retains complete control over finances, thereby restricting the victim's overall independence. Lakshmi, for example, was unable even to buy candy without her husband's permission.[29] Although Mona worked in a high-paying job, her husband deposited her paychecks into his account.[30] Leticia, an immigrant from

(...Continued)
consequences on the abuser's status and their own relief, they do not seek intervention in the domestic violence.").

[29] Mehrotra, *supra* note 16, at 630.

[30] *Id.*

Mexico, was often left alone and penniless by her husband while he traveled on business trips; she was forced to beg for money on the street to feed herself and her young son.[31] Thu, a Vietnamese immigrant, was unable to escape her husband -- who raped her, made her kneel on broken glass, and repeatedly beat her -- because she was "kept home," and therefore never learned English, went to school, or acquired knowledge of financial matters.[32]

The problem of economic deprivation can be especially confining for immigrant victims of gender-motivated violence, who may be far from family and friends, and therefore lack networks of support in this country that are crucial to surviving outside the abusive relationship.[33] For this reason, § 13981 is especially helpful to immigrant victims of gender-motivated domestic violence because it provides them with a means of obtaining compensatory relief for the abuse suffered.[34] Using § 13981, immigrant

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[31] Sarah Tully Tapia, *The Helpless Immigrants: Abused Hispanic Women are 'the most vulnerable of all'*, Arizona Daily Star, April 25, 1999, at 1A, available in 1999 WL 5717585.

[32] Huang, *supra* note 24.

[33] This problem may be even more pronounced for undocumented women, who cannot work legally and have limited eligibility for public benefits because of their immigration status: "Significant numbers of undocumented spouses are deterred from leaving their abusers because they do not have the legal status or the employment authorization necessary to support themselves and their children." Teran, *supra* note 24, at 12; *see also* Leslye E. Orloff, Deeana Jang, & Catherine F. Klein, *With No Place to Turn: Improving Legal Advocacy for Battered Immigrant Women*, 29 Fam. L. Q. 313, 313 (1995) (relating story of Cecilia, an undocumented South American immigrant who remained dependent on her brutally abusive husband, in part because she had no legal means of supporting herself and her family in this country).

[34] Because gender-motivated domestic violence against immigrant women crosses socioeconomic boundaries, and because many immigrant

(Continued...)

victims can diminish the barrier of economic dependence that sometimes prevents them from leaving abusive relationships. In this manner, § 13981 helps to break the cycle of gender-related domestic violence, and to increase the ability of its victims to contribute independently to the national workforce.

4. Failures of State and Local Legal Systems

Even when immigrant women attempt to overcome the barriers to escape, and seek protection and redress from gender-motivated abuse, they often are treated with indifference or bias by state and local authorities.

Battered immigrant women are affected by the apathy and bias with which state and local justice systems treat domestic violence cases generally.[35] Even in cases of brutal abuse, many state and local prosecutors have been reluctant to press charges and fully prosecute alleged abusers, often following

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families earn income comparable to that earned by native families, many immigrant victims of gender-motivated violence likely will be able to obtain meaningful compensatory relief from their abusers under § 13981. *See generally* Michael Fix & Jeffrey S. Passel, The Urban Institute, *Immigration and Immigrants: Setting the Record Straight* 36 (1994) (reporting that, although individual immigrants tend to earn less income than natives, immigrant households earn nearly the same annual income as native households, and immigrant households headed by immigrants entering the United States before 1980 earn almost ten percent more annually than native households).

[35] The demonstrated inadequacy of the response of state and local justice systems to cases of violence against women, including domestic violence cases, was one of the primary bases for § 13981's enactment. *See, e.g.*, S. Rep. No. 102-197, at 42-48 (1991).

policies of automatically dismissing charges when the victim so requests.[36] One immigrant woman had been beaten so badly by her husband that she required extensive reconstructive surgery; the state's attorney, however, was reluctant to criminally prosecute the abuser because "it was only one incident."[37]

State and local judges and court personnel often have demonstrated hostility toward domestic violence victims, blaming them for "refusing" to leave their abusers. Examples abound in which judges have scolded, mocked, or threatened victims in open court.[38] Aside from facing outward discrimination, domestic violence victims also often are frustrated in their efforts to obtain relief by complicated and confusing judicial processes.[39]

In the case of battered immigrant women, language barriers may also preclude meaningful police assistance, as police may tend to believe an English-speaking abuser's story over a non-English-speaking victim's.[40] In addition,

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[36] *See* Epstein, *supra* note 19, at 15-16 (noting that, in response to outcries regarding low prosecution and conviction rates, certain jurisdictions have adopted "no-drop" policies, under which domestic violence charges are prosecuted regardless of the victim's expressed wishes).

[37] Kelly, *supra* note 18, at 693.

[38] In one case, a North Dakota judge reportedly warned a victim that "If you go back [to the perpetrator] one more time, I'll hit you myself." *See* Epstein, *supra* note 19, at 40; *see also id.* at 42-43 (providing additional egregious examples of judicial mockery of domestic violence victims).

[39] *See id.* at 21-28.

[40] Kelly, *supra* note 18, at 679 (discussing Spanish-speaking (Continued...)

sometimes police discrimination against immigrant women is direct: one Asian woman, upon reporting her husband's continued harassment and violation of his restraining order, was simply told by police to "go back to where she belongs."[41]

The failure of state and local authorities adequately to address the problem of domestic violence, particularly when coupled with the significant barriers already faced by battered immigrant women, leads many such women to refrain from or delay reporting abuse: one survey found that 83% of battered immigrants did not contact the police despite long histories of domestic violence.[42] These deterrents against reporting may work to eliminate the possibility of obtaining criminal convictions of abusers: even if the victim eventually reports the abuse, critical evidence of injury may be lost, and her story may be disbelieved because of her failure to come forward immediately.

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immigrant victim whose broken-English story of abuse was discounted by police in favor of her husband's denial, which was spoken in English); *see also* Malone, *supra* note 14 (observing that a major obstacle for battered Asian immigrants seeking police protection is that "[t]he police don't speak their language and sometimes the abuser is used as a translator").

[41] Kelly, *supra* note 18, at 678.

[42] *See* Orloff & Little, *supra* note 4, at 11; *see also, e.g.*, Preisser, *supra* note 5, at 690 (remarking that Asian Indian victims often fear reporting abuse to authorities "based on the perception that [the authorities] would lack understanding of their cultural, ethnic, linguistic, and immigrant issues"). Another factor deterring a battered immigrant from calling police may be experiences with police brutality in her home country or in her neighborhood in this country. *See* Orloff & Little, *supra*, at 11.

Recognizing the insufficiency of state and local attempts to address domestic violence, along with the legal obstacles to civil relief still in place in some states,[43] § 13981 provides a needed alternative source of federal civil redress for all victims of gender-motivated domestic violence, including battered immigrant victims. A civil remedy does not require the understanding of law enforcement authorities or prosecutors; instead, the victim controls her own fate. Moreover, whereas a failure to report an incident of violence immediately may be fatal to a prosecutor's willingness to proceed, that fear of reporting may not pose a barrier to obtaining civil relief. As such, particularly in view of the unique additional barriers they face in seeking protection and redress, battered immigrant women may be especially benefited by the opportunity provided by § 13981 to bypass state and local authorities.

II. SECTION 13981 IS AN ESSENTIAL AND CONSTITUTIONAL PART OF THE STATUTORY SCHEME ESTABLISHED BY VAWA TO PROVIDE PROTECTION AND REDRESS FOR VICTIMS OF GENDER-MOTIVATED VIOLENCE, INCLUDING IMMIGRANTS.

Section 13981 is a critical piece of the broad statutory scheme established by VAWA to provide all victims of gender-motivated violence, including battered immigrant women, with sources of protection and redress.

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[43] *See* S. Rep. No. 103-138, at 55.

VAWA seeks comprehensively to address the national problem of gender-based violence, including domestic violence. Among other things, VAWA establishes federal criminal penalties for interstate domestic violence crimes;[44] allocates grant monies for law enforcement education and domestic violence service organizations;[45] provides for interstate enforcement of civil protection orders;[46] and, through § 13981, gives battered women a reliable means of obtaining civil redress from their abusers.

VAWA also ameliorates particular hardships experienced by battered immigrant women. For example, the statute confers upon abused immigrants the right to "self-petition" for lawful residency in this country; through August 1999, 4,666 such immigrants had been approved for lawful status using this process.[47] Additionally, VAWA explicitly appropriates monies to be spent on funding organizations dedicated to assisting undeserved populations of victims, such as battered immigrants.[48]

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[44] *See* 18 U.S.C. §§ 2261, 2264 (1994 & Supp. III 1997).

[45] *See* 42 U.S.C. § 3796gg.

[46] *See* 42 U.S.C. §2265.

[47] *Stalking and Violence Against Women: Violence Against Women Act Oversight Hearing Before the Subcomm. on Crime of the House Comm. on the Judiciary*, 1999 WL 27594937 (1999) (testimony of Bonnie Campbell, Director, Violence Against Women Office, U.S. Department of Justice).

[48] 42 U.S.C. § 3796gg(b)(5) (declaring that grant funds under VAWA may be used for "developing or improving delivery of victim services to racial, cultural, ethnic, and language minorities"); *see also id.* § 3796gg-2(7).

Although directed at all victims of gender-motivated violence, § 13981 is crucial for battered immigrant women for several reasons. *First*, as discussed above, the unique barriers to escape faced by immigrant women, coupled with the failures of state and local authorities to adequately address the problem of domestic violence, deter many battered immigrant women from reporting abuse when it occurs. By the time the abuse is reported, crucial evidence may be lost and witness credibility diminished, likely eliminating the possibility of obtaining a criminal conviction. Moreover, for those battered immigrant women whose immigration statuses are tied to their husbands', and who may therefore face deportation in the event their husbands are convicted of criminal abuse and deported, a civil remedy may be the only practically available means of obtaining redress for the abuse suffered.

As Congress found in enacting § 13981, many states retain interspousal immunities and other legal barriers that may preclude abused immigrant women from obtaining state civil remedies.[49] Section 13981 helps compensate for these obstacles by providing those battered immigrant women who eventually decide to take action against their abusers with a means of obtaining federal civil redress for the abuse they have suffered. Accordingly, § 13981 is an appropriate effort under Section 5 of the Fourteenth Amendment to remedy state and local failures to protect and provide redress for victims of gender-motivated violence.[50]

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[49] *See* S. Rep. No. 103-138, at 55.

[50] *See Wright v. Wright*, No. Civ. 98-572-A (W.D. Okla. Apr. 27, 1999); *Timm v. DeLong*, No. 8:98-CV-43 (D. Neb. June 22, 1998) (upholding §13981 under the Commerce Clause and Section 5 of the Fourteenth Amendment).

Second, § 13981 provides battered immigrant women with clear knowledge of the fact that domestic violence will not be tolerated in the United States under either the civil or criminal justice systems. This knowledge may encourage immigrants to seek protection from their abusers rather than endure the abuse based on a belief in its "acceptability."

Section 13981 constitutionally helps to eradicate the broad problem of gender-motivated violence, along with the particular problems faced by immigrant victims of gender-motivated domestic violence. Even though the problem of gender-based domestic violence against immigrant women is only a subset of the larger problem of gender-motivated violence, it alone affects families and communities nationwide, with certain substantial effects on interstate commerce.[51] As such, §13981 should be upheld as a proper exercise of Congress' power under the Commerce Clause.[52] This Court should preserve this important weapon in the fight against the national problem of violence against women, including the problem of gender-based domestic violence against immigrant women.

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[51] Because the briefs of the parties and other *amici* will address in detail the substantial effects on interstate commerce, this *amici* brief does not duplicate that discussion.

[52] *See, e.g., Ericson v. Syracuse Univ.*, No. 98 Civ. 3435 JSR, 1999 WL 212684 (S.D.N.Y. Apr. 13, 1999); *Ziegler v. Ziegler*, 28 F. Supp. 2d 601 (E.D. Wash. 1998); *Anisimov v. Lake*, 982 F. Supp. 531 (N.D. Ill. 1997); *Seaton v. Seaton*, 971 F. Supp. 1188 (E.D. Tenn. 1997); *Doe v. Doe*, 929 F. Supp. 608 (D. Conn. 1996) (all upholding §13981 as constitutionally enacted under the Commerce Clause).

CONCLUSION

The decision of the lower court should be reversed.

Respectfully submitted,

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November 12, 1999

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